

**REMARKS**

Group II (claims 21 through 24) is provisionally elected with traverse.

As an initial matter, Applicant observes that this restriction requirement is not proper under MPEP 803, which requires that the Examiner provide "reasons and/or examples to support conclusions." Here, the Examiner has stated that "an optical disk having no transparent layer is a completely different device from an optical disk having a transparent layer" without any supporting reasons or examples to justify this conclusion.

Applicant respectfully reminds the Examiner what "independent" means in this context. As set forth in MPEP 802.01, "independent" means that "there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect."

Applicant has claims directed to a "first surface" optical disk having an information layer organized into ECC blocks. As discussed by the Applicant on, e.g., page 5, lines 7 through 14, conventional optical disks may be denoted as "second-surface" disks because the information layer is covered by a relatively thick transparent layer, typically at least 50 wavelengths in thickness or more with respect to the wavelength of the laser beam that will be used to read/write the information layer. This thick transparent layer then acts to defocus dust particles lying on its surface with respect to the information layer. But this thick layer acts to introduce optical aberrations that are undesirable in the miniaturization of both the optical disk and the related optical head used to read/write to the optical disk. As such, the present assignee has invented and claimed "first-surface" optical disks that do not include this thick overlaying transparent layer. Instead, dust particles are not defocused but must be dealt with using ECC alone, leading to the inventive ECC blocks recited in claims 16 through 24.

Should the claimed transparent layer in the group I claims (16-20) function to defocus dust particles as discussed with respect to "second-surface" optical disks, Applicant would agree that such a disk is a "completely different" device from that recited in the group II claims (21-24). In such a case, there would be no need for the robust ECC blocks recited in the group I claims. However, the recited transparent layer in these claims is specifically limited to have a thickness: "wherein the thickness of the transparent layer with respect to the wavelength of the read/write laser beam is such that dust particles on the surface of the transparent layer are not defocused when reading data from the information layer with the laser beam passing through the transparent layer." As such, the transparent layer acts only as

LAW OFFICES OF  
MACPHERSON KWOK CHEN &  
REDD LLP  
2402 MICHELSON DRIVE  
SUITE 210  
IRVINE CA 92612  
(949) 752-7040  
FAX (949) 752-7049

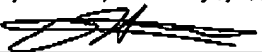
an optical coupling agent, not a defocusing means. In this regard, the group I claims do not have different functions from that of the group II claims: both function as first-side optical disks with robust ECC blocks. Furthermore, there is no difference in their operation. As such, Applicant respectfully submits that the restriction requirement is improper under the MPEP guideline and should be rescinded.

LAW OFFICES OF  
MACPHERSON KWOK CHEN &  
HEID LLP  
2402 MICHELSON DRIVE  
SUITE 210  
IRVINE CA 92612  
(949) 752-7040  
FAX (949) 752-7040

CONCLUSION

For the above reasons, Applicant respectfully requests rescission of the restriction requirement. If the Examiner has any questions or concerns, a telephone call to the undersigned at (949) 752-7040 is welcomed and encouraged.

I hereby certify that this correspondence is facsimile transmitted to the Commissioner for Patents, Alexandria, VA 22313-1450, at (703) 872-9306, on February 5, 2004.

  
Eric Hoover

February 5, 2004  
Date of Signature

Respectfully submitted,



Jonathan Hallman  
Attorney for Applicant(s)  
Reg. No. 42,644

LAW OFFICES OF  
MACPHERSON KWOK CHEN &  
ERIC HOOPER  
2402 MICHELSON DRIVE  
SUITE 210  
IRVINE CA 92612  
(949) 752-7040  
FAX (949) 752-7049